



**UNITED STATES DEPARTMENT OF COMMERCE**  
**Patent and Trademark Office**

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*LR*

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
09/043,574	03/26/98	HALBLANDER	S 98037

LMC1/0811  
DENNISON MESEROLE POLLACK & SCHEINER  
1745 JEFFERSON DAVIS HIGHWAY  
SUITE 612  
ARLINGTON VA 22202

EXAMINER

KAZIMI, H

ART UNIT

PAPER NUMBER

2765

DATE MAILED: 08/11/00

**Please find below and/or attached an Office communication concerning this application or proceeding.**

**Commissioner of Patents and Trademarks**

# Office Action Summary

Application No.

09/043,574

Applicant(s)

Halblander

Examiner

Hani Kazimi

Group Art Unit

2765



☒ Responsive to communication(s) filed on May 19, 2000

☐ This action is **FINAL**.

☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire 3 month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

## Disposition of Claims

☒ Claim(s) 2, 3, 5, 9, 11, 15, 16, 19-22, 24, and 26-32 is/are pending in the application.

Of the above, claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

☐ Claim(s) \_\_\_\_\_ is/are allowed.

☒ Claim(s) 2, 3, 5, 9, 11, 15, 16, 19-22, 24, and 26-32 is/are rejected.

☐ Claim(s) \_\_\_\_\_ is/are objected to.

☐ Claims \_\_\_\_\_ are subject to restriction or election requirement.

## Application Papers

☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.

☐ The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner.

☐ The proposed drawing correction, filed on \_\_\_\_\_ is ☐ approved ☐ disapproved.

☐ The specification is objected to by the Examiner.

☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. § 119

☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

☐ All ☐ Some\* ☐ None of the CERTIFIED copies of the priority documents have been  
☐ received.

☐ received in Application No. (Series Code/Serial Number) \_\_\_\_\_.

☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\*Certified copies not received: \_\_\_\_\_

☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

## Attachment(s)

☐ Notice of References Cited, PTO-892

☐ Information Disclosure Statement(s), PTO-1449, Paper No(s). \_\_\_\_\_

☐ Interview Summary, PTO-413

☐ Notice of Draftsperson's Patent Drawing Review, PTO-948

☐ Notice of Informal Patent Application, PTO-152

--- SEE OFFICE ACTION ON THE FOLLOWING PAGES ---

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## **DETAILED ACTION**

1. This communication is in response to the Continued Prosecution Application (CPA) request transmittal and the amendment filed on April 20, 2000.

### ***Status of Claims***

2. Of the original claims 1-20, claims 1, 4, 6-8, 10, 12-14, 17, and 18 have been canceled, claims 21-31 have been added in the amendment filed on November 16, 1999. In the amendment filed on April 20, 2000, claims 23, and 25 have been canceled, claims 2, 3, 5, 9, 11, 15, 16, 19, and 20 have been amended, and claim 32 have been added. Therefore, claims 2, 3, 5, 9, 11, 15, 16, 19-22, 24, and 26-32 are under prosecution in this application.

### ***Summary of Office Action***

3. Applicants' arguments with respect to claims 21, and 32 filed on April 20, 2000 have been fully considered, and discussed in the next section below or within the following rejection under 35 U.S.C. § 102 are not deemed to be persuasive. Therefore, claims 2, 3, 5, 9, 11, 15, 16, 19-22, 24, and 26-32 are rejected as being unpatentable over the art cited below, and Applicants' request for allowance is respectfully denied.

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***Response to Applicants' Amendment***

4. The Examiner acknowledges Applicants' amended claims 2, 3, 5, 9, 11, 15, 16, 19, and 20, and therefore withdraws the prior office action's claim objection regarding this matter.

5. The Examiner acknowledges Applicants' cancellation to claims 23, and 25 and the amended claim 21 to overcome the 35 U.S.C. § 112 2nd paragraph rejection, and therefore withdraws the prior office action's rejection regarding this matter with respect to claims 21, 23, and 25. Applicants' remaining traversals are discussed under the 35 U.S.C. § 112, and 35 U.S.C. § 102 rejections below.

***Claim Rejections - 35 USC § 112***

6. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

7. Claims 2, 3, 5, 9, 11, 15, 16, 19, 20, 22, 24, and 26-31 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The claims are generally narrative and indefinite, failing to conform with current U.S. practice. They appear to be literal translation into English from a foreign document and are replete with grammatical and idiomatic errors. For example, claim 11, lines 6-8, “--- time, within which, upon the lapse of one or more of the missing

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criteria a deployment decision is not prevented for the job in question", it is unclear what is meant by the above phrase and what is being claimed. Claim 11 is used for an example, however, this rejection applies to the remaining of the claims mentioned above. Appropriate correction is required.

Due to the claims being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention, the following art rejections are based on the examiner's interpretation of the claims.

***Claim Rejections - 35 USC § 102***

8. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

9. Claims 2, 3, 16, 21, 22, 24, 26, 27, 30, and 32 are rejected under 35 U.S.C. 102(b) as being anticipated by Parad U.S. Pat. No. 5,369,570.

10. Claims 2, 3, 16, 21, 22, 24, 26, 27, and 30 are rejected under 35 U.S.C. 102(b) as being anticipated by Parad U.S. Pat. No. 5,369,570 as discussed in paragraph 6 of paper No. 7.

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Further: Claim 32, Parad teaches a method for activating resources for carrying out a job (Abstract) comprising the steps of:

providing a database of resources, resources properties, and resource status (col. 4, lines 18-66, and column 9, line 34 thru col. 10, line 32);

providing an electronic description of jobs to be performed including a priority for each job (col. 4, lines 18-66, col. 5, lines 40-58, and column 9, line 34 thru col. 10, line 32);

providing criteria to be satisfied in connection with the performance of each job (col. 4, lines 18-66, and col. 5, lines 5-39);

on an going basis selecting and activating resources based on said criteria and on said resource properties and resource statuses to accomplish said job (col. 5, lines 5-39, and column 9, line 34 thru col. 10, line 32); and

updating the status of said resources (column 13, lines 2-19, and col. 16, lines 31-39).

### ***Response to Arguments***

11. In the remarks, the applicant argues in substance that:

Parad reference does not appear to disclose “a system that carries out “ongoing optimization simulation” as required by claim 21. Parad teaches a scheduler that can calculate a new schedule whenever an error condition, such as a broken piece of equipment, is detected.” Similar arguments are also made with respect to claim 32 that, “Parad does not select resources on an ongoing basis, but rather selects and schedules resources only once unless an error

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condition occurs”.

In response ;

The fact that Parad reference calculates a schedule for deploying resources ahead of time, and performs this step only once unless an error condition occurs is irrelevant to the present invention, it is an additional step that is performed before an error condition occurs. However, Parad performs similar process as in Applicant's invention when an error condition occurs such as a worker is absent or a piece of machinery breaks down. On page 3 of the remarks, Applicant admits that “Parad provides a fast method for recalculating the entire day's schedule.” It is clear from reviewing Parad's reference that the process and method steps for recalculating the entire day's schedule is no different than Applicant's claimed invention for activating resources and in carrying out an ongoing optimization simulation process. Parad is not relied upon in calculating a schedule ahead of time, Parad is relied upon only from the point an error occurs on.

### ***Conclusion***

12. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Hani Kazimi whose telephone number is (703) 305-1061. The examiner can normally be reached Monday-Friday from 8:30 AM to 5:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tod Swann, can be reached at (703) 308-7791.

The fax number for Formal or Official faxes to Technology Center 2700 is (703) 308-9051

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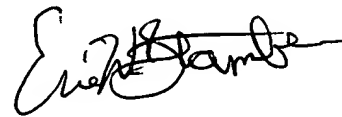
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or 9052. Draft or Informal faxes for this Art Unit can be submitted to (703) 308-5357.

Any inquiry of a general nature or relating to the status of this application should be directed to the Group receptionist whose telephone number is (703) 305-3900.

Hani.Kazimi

August 9, 2000

A handwritten signature in black ink, appearing to read "Eric W. Stamber", with a stylized flourish extending from the end.

ERIC W. STAMBER  
PRIMARY EXAMINER